

BAIL SLIP

C.A.No.502/1998

1. The 1st Appellant/Accused No.3 in S.C.No.269/96, on the file of the Principal District and Sessions Judge, Chenglepet viz. (1) Kozhi Alias Kasi Murugan was directed to be released on bail in and by the order of this Court dated 16.7.98 made in Crl.M.P.No.4139/98 in Crl.A.No.502/98. The 2nd Appellant/Accused No.4 in S.C.No.269/96 on the file of the Principal District and Sessions Judge, Chenglepet viz. Vikram alias Vikraman alias Senthilvel was directed to be released on bail in and by the order of this Court dated 19.7.1999 made in Crl.M.P.No.4973/99 in Crl.A.No.502/98.

C.A.No.563/1998:

2. The Appellants/Accused 1 and 5 in S.C.No.269/96 on the file of the Principal District and Sessions Judge, Chenglepet viz. (1) Durai (2) Justin were directed to be released on bail in and by the order of this Hon'ble Court dated 25.6.1999 made in Crl.M.P.No.4280 of 1999 in Crl.A.No.563/1998.

C.A.No.633/1998:

3. The Appellant/Accused No.2 in S.C.No.269/96 on the file of the Principal District and Sessions Judge, Chenglepet viz. Premkumar was directed to be released on bail in and by the order of this Hon'ble Court dated 15.6.1999 made in Crl.M.P.No.2472 of 1999 in Crl.A.No.633/98.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-6-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.Nos.502, 563 and 633 of 1998

1.Kozhi @ Kasi Murugan	.. Appellants in
2.Vikram @ Vikraman @ Sakthivel	C.A.502/98/Accused No.3 & 4
1.Durai	.. Appellants in
2.Justin	C.A.563/98/Accused No.1 & 5
https://hcservices.ecourts.gov.in/hcservices/ Premkumar	.. Appellant in
	C.A.633/98/Accused No.2

vs.

State rep. by
Inspector of Police
Sankar Nagar P.S.,
Sankar Nagar, Chennai.

.. Respondent in
all appeals/Complainant

All these appeals have been preferred under Sec.374 of the Code of Criminal Procedure against the judgment of the Principal Sessions Judge, Chengleput, made in S.C.No.269/96 and dated 13.6.1998.

For Appellants in
C.A.No.502/98 : Mr.R.Ragupathy,
Senior Counsel

For Appellants in
C.A.No.563/98 : Mr.R.Asokan,
Senior Counsel
for M/s.Gita Asokan

For Appellant in
C.A.No.633/98 : Mr.P.Kumaresan

For Respondent in
C.A.Nos.502, 563
and 633/98 : Mr.S.Jayaraman,
Addl. Public Prosecutor

COMMON JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

This judgment shall govern these three appeals in C.A.Nos.502, 563 and 633 of 1998.

2. C.A.No.502/98 is filed by A-3 and A-4, and C.A.No.563/98 is filed by A-1 and A-5, while C.A.No.633/98 is filed by A-2, in a case of murder, where the appellants/accused stood charged as below:

(i) A-1, A-3, A-4 and A-5 were charged under Sec.147 of I.P.C.

(ii) A-2 was charged under Sec.148 of I.P.C.

(iii) A-3 was charged under Sec.449 of I.P.C.

(iv) A-1, A-2, A-4 and A-5 were charged under Sec.449 read with 149 of I.P.C.

(v) A-1, A-2, A-4 and A-5 were charged under Sec.302 of I.P.C.

(vi) A-3 was charged under Sec.302 read with 149 of I.P.C.

3. On trial, the accused were found guilty as per the first charge, second charge, fifth charge and sixth charge respectively, and a fine of Rs.500/- along with default sentence was imposed for the first charge. As regards the fifth and sixth charges, life imprisonment was awarded. A fine of Rs.750/- along with default sentence was awarded for the second charge, while A-3 in respect of the third charge and A-1, A-2, A-4 and A-5 as regards the fourth charge were acquitted by the trial Judge.

4. The short facts necessary for the disposal of this appeal can be stated thus:

(a) The first accused and P.W.2 Jayamurugan, were running an Ice Factory called Jaya Ice Company in Pammal. While running so, they had a quarrel. Then, the same business was put an end by way of a panchayat, where it was decided that the first accused was liable to pay Rs.1,000/- to P.W.2; but, he paid only Rs.300/-. The rest was not paid. There was a demand made, due to which enmity arose between the parties. After departing from the business, P.W.2 and P.W.4 Sundarapandy had a partnership business called Vijaya Ice Factory, where the deceased Sudhakar was taken for service. P.W.7 Thangaraj Nadar, was also doing retail business from taking ice there. Whenever there was a demand made for the payment of the rest of the amount referred to above, the enmity was continuing. P.W.1 Velkumar, was having a plantain thope, situated in Door No.1, Nallathambi Street. P.Ws.2 and 4 during night hours, used to stay there. While so, on 9.3.1994, at about 9.30 P.M., they were all chatting. The same was noticed by the second accused, and after that, the second accused went away. When P.W.s.1 and 2 and the deceased were all lying inside the shop, at about 1.00 A.M., it was knocked. Then, P.W.1 switched on the light and opened the shop, when A-1 and another accused got inside and dragged the deceased. At that time, A-1 was armed with knife, while the other accused 5 in number, out of whom, one was subsequently split up, were armed with sticks. Immediately, the deceased was attacked by the first accused with knife on his head, while the others attacked him with sticks indiscriminately. The same was witnessed by P.Ws.1, 2 and 3 also. P.W.5 who was standing nearby also witnessed the occurrence. Immediately, P.Ws.1 and 2 went to Sankar Nagar Police Station. P.W.1 gave a report Ex.P1 to P.W.13 Thangeswaran, the Sub Inspector of Police, attached to the said Police Station. On the strength of Ex.P1 report, P.W.13 registered a case in Crime No.1167 of 1994 under Sections 147, 148, 452 and 302 of I.P.C. The Printed First Information Report Ex. P10 was despatched to the concerned Court.

(b) The accused stopped the vehicle namely a mini lorry bearing Registration No.TCN 9459, and took the body to the Government Hospital, Chrompet, where P.W.11 Dr.Pushpavalli, was present. It was informed to the Medical Officer that he fell down from the lorry, and he sustained the injuries. So saying, they went away. The said statement was recorded by the Medical Officer in Ex.P6, and she gave an information to Chrompet Police Station. The information was received by P.W.8 Rajendran, the Head Constable. Then, it was informed to Pallavaram Police Station through a message. The officials of Pallavaram Police Station, who received the same, found it to be within Sankar Nagar Police Station, and they also gave an information to the concerned Police Station.

(c) On receipt of the copy of the F.I.R., P.W.14 Thanigaivel, the Inspector of Police, took up the case for investigation, proceeded to the scene of occurrence, made an inspection in the presence of witnesses and prepared Ex.P3 observation mahazar and Ex.P11 rough sketch. He recovered M.O.6 bloodstained earth, and M.O.7 sample earth, from the place of occurrence, under a mahazar in the presence of witnesses. He conducted inquest on the dead body of Sudhakar in the presence of panchayatdars and witnesses at about 10.00 A.M. and prepared Ex.P13 inquest report. Following the same, the body was sent to the Government Hospital for conducting postmortem, along with a requisition.

(d) On receipt of the requisition, P.W.12 Dr.Saravanabhava, Assistant Surgeon, attached to the Government Hospital, Tambaram, conducted autopsy on the dead body of Sudhakar and noticed the following injuries.

"External Exam.

(1) An abrasion about 4 cm x $\frac{1}{4}$ cm present on the (Lt) lower arm.

(2) An abrasion about $\frac{1}{2}$ x $\frac{1}{2}$ present in the (Lt) Shoulder.

(3) An abrasion about $\frac{1}{4}$ x $\frac{1}{4}$ present over the back of the hip.

Head:

(1) A cut injury about 4 cm x 1 cm x bone deep present over the (Rt) side of the frontal Bone.

(2) An abrasion about 1 cm x 1 cm present behind the (lt) Ear lobe.

(3) A contusion about 1 cm x 1 cm present over the (Lt) temple region (above the (Lt) Ear lobe).

On Dissection:

Skull: Extra Dural Haemotoma present. There is a small hole over the Dura matter thro' which blood oozing out subdural Haemotoma over the (Lt) hemisphere Fracture of the anterior cranial fossa."

The Doctor has issued Ex.P9 postmortem certificate and has opined that the deceased died out of shock and haemorrhage due to head injury.

(e) During investigation, A-1 and A-2 were arrested on 12.3.1994. A-1 gave a confessional statement, which was recorded by the Investigating Officer. The admissible part was marked as Ex.P15. Following the same, M.O.1 knife and M.Os.13 to 17 sticks, were produced by him, and they were recovered under different mahazars. All these material objects recovered from the place of occurrence, from the accused and from the dead body, were despatched to the Court along with a requisition for sending them for chemical analysis. Accordingly, they were subjected to. The Chemical Analyst's report Ex.P22 and the Serologist's report Ex.P23 were received and placed before the Court. On completion of the investigation, the final report was filed by the Investigating Officer before the concerned Court. Then, the case was committed to the Court of Session. The above charges were framed against the accused, the appellants herein.

5. In order to substantiate the charges levelled against the appellants/accused, 14 witnesses were marched by the prosecution, and the prosecution relied on 24 exhibits and 17 material objects. On completion of the evidence on the side of the prosecution, all the accused were questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, and they flatly denied the same as false; but, they would further add that the deceased fell down from a lorry, and he died due to the injuries sustained, and it was a false case foisted against them by the prosecution due to the enmity between the parties. No defence witnesses were examined. After hearing both sides, the trial Court was of the opinion that the prosecution has proved the case in respect of the charges 1, 2, 5 and 6 and awarded the punishment as mentioned above. The aggrieved accused have brought forth these three appeals before this Court.

6. The learned Senior Counsel appearing for the appellants made the following submissions:

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It was a case one foisted against the appellants/accused. It was a case where they have brought the defence version that the deceased, who was working in the shop of P.W.1, fell down at

the time, when he was loading in a mini lorry, sustained injuries and died. The injuries sustained by the deceased at the time of the incident and noted by the Doctor in the postmortem certificate, would clearly indicate that those injuries were possible and probable by falling down from a lorry, and thus, the case of the defence was more probable. While there are two probabilities, one in favour of the appellants will draw the attention of the Court of Sessions to give a judgment of acquittal. In the instant case, the lower Court should have considered the same and acquitted the accused, but not done so.

7. It was further added by the learned Senior Counsel that the prosecution wanted to rely on the evidence of P.Ws.1, 2, 3, 4 and 5; that so far as the evidence of P.W.3 was concerned, he had turned hostile, and hence, no useful purpose could be served; that so far as P.W.4 is concerned, from his evidence, it could be seen that he came to the place of occurrence only subsequently; that as regards P.W.5, his evidence could not be believed, since it does not show the nexus of the accused to the crime in question, and then, what was available for the prosecution was the evidence of P.Ws.1 and 2; that so far as P.Ws.1 and 2 are concerned, P.W.1 was shown to be a very close friend of the deceased, and P.W.2 was the brother-in-law of the deceased; that their testimony are interested one; that if the test of careful scrutiny is applied, then it could be well seen that their evidence should not have been relied on by the lower Court; that apart from that, the prosecution came with the motive; and that not only the motive was flimsy, but also the motive has not been proved before the trial Court.

8. It is the further submission of the learned Senior Counsel that the occurrence has taken place in the midnight and hence, it could not have been seen by anybody; that so far as P.Ws.4 and 5 are concerned, no identification parade was conducted; that the evidence of P.Ws.1 and 2 cannot be stated to be worthy to sustain a case like this; that though the occurrence has taken place at 1.00 A.M., the F.I.R. has reached the Court at about 1315 hours, despite the fact that the Court is also situate within the City limit; that there is undue delay noticed, and the same remained unexplained, and in such circumstances, the lower Court should have rejected the prosecution case and should have acquitted the accused.

9. The learned Senior Counsel would add that A-3 was having his shop opposite to that of P.W.1, and at that time, he was doing a chicken shop also; that he had no motive or intention to share; that he also did not have any common object; that there was all possibility of going over there to see the occurrence only; but, in the instant case, A-3 has been unnecessarily roped in; that there was no evidence to show his complicity in the offence, and hence, he should have been acquitted; and that so far as the other accused namely A-4, was concerned, he has also been roped in and should have been acquitted.

10. The learned Senior Counsel would add that according to the prosecution, the dead body was taken in a mini lorry to the hospital; but, neither the driver nor the cleaner of the lorry was examined; that the same would be fatal to the prosecution case; that the lower Court without considering all the contentions put forth, has found the accused guilty, and hence, they were entitled for an acquittal in the hands of this Court.

11. The learned Counsel appearing for the second accused would submit that he has no involvement in the crime in question; that the lower Court has erroneously considered the evidence adduced by the prosecution; that actually, there was no evidence at all to connect A-2 with the crime, and hence, he is entitled for an acquittal.

12. The Court heard the learned Additional Public Prosecutor on the above contentions.

13. The Court paid its full attention on the submissions made, and made a thorough scrutiny of the materials available.

14. It is not in controversy that the deceased Sudhakar met his death instantaneously, and it was out of homicidal violence. The postmortem certificate has also been brought forth to the notice of the Court. This fact is not disputed by the appellants/accused either before the trial Court or before this Court, and thus, it could be safely concluded that the deceased Sudhakar died out of homicidal violence.

15. The specific case of the prosecution was that an occurrence has taken place on 9.3.1994 during night hours, when the first accused along with another came and knocked the doors of the shop of P.W.1, and P.W.1 switched on the lights and opened the doors, and these accused were seen by him. The witnesses who witnessed the occurrence, were P.Ws.1, 2, 3, 4 and 5. As rightly pointed out by the learned Senior Counsel for the appellants, the evidence of P.Ws.3 to 5 would go to the extent of showing that there was an occurrence that took place at the night hours as put forth by the prosecution. Hence, their evidence cannot be taken to sustain the fact that it was the accused, who have got involvement in the crime or participated there.

16. At this juncture, the evidence of P.Ws.1 and 2 has got to be scrutinised. On careful scrutiny of their evidence, it could be seen that P.W.1 is the friend of the deceased, and P.W.2 is the brother-in-law of the deceased. Needless to say that in a case where there are interested witnesses, on that ground only, their evidence cannot be rejected; but, the Court has to exercise its care and caution over their evidence. Applying the test of care and caution, the Court has to necessarily state that their evidence inspired the confidence of the Court. Apart from that, it can be well stated that despite the cross-examination of both these witnesses, the evidence, as to the entire occurrence, the

participation of the accused, the possession of weapons and the act committed by them, in the chief examination, remain in tact and unshaken. A sincere attempt was made by the learned Senior Counsel that the evidence of P.Ws.1 and 2 that they have witnessed the occurrence cannot be believed, since the occurrence had taken place during night hours, and no one could have seen the same. This contention cannot be countenanced, in view of the evidence of P.Ws.1 and 2, which is clear, cogent and convincing. Under such circumstances, without any difficulty, the evidence of P.Ws.1 and 2 has got to be accepted. That apart, the evidence of P.Ws.1 and 2 is fully corroborated by the medical evidence, which was adduced through the postmortem certificate and P.W.12, the Doctor. A perusal of the postmortem certificate and the evidence of the Doctor P.W.12 would clearly indicate that the version put forth by P.Ws.1 and 2, is true and genuine.

17. What was all contended by the accused/appellants before the trial Court and here also is that at the time of the occurrence, the deceased while he was loading in the lorry, fell down from the lorry, and he sustained injuries, and due to that injury, he died, and a statement was made to the Doctor P.W.11, who also recorded the same in the Accident Register Ex.P6. This contention is thoroughly falsified by the injuries, including a cut injury on the head, noticed by the Doctor P.W.12 on the deceased and recorded in the postmortem certificate. Under the circumstances, the story put forth by the defence before the lower Court was to be necessarily rejected, and the lower Court has rightly done so. Apart from that, the recovery of material objects pursuant to the confessional statement made by the accused, supports the prosecution case. The contention put forth that the driver and the cleaner of the lorry were not examined before the lower Court cannot in any way take away the rigor or truth of the prosecution case.

18. As regards the contention put forth by the learned Senior Counsel that there was undue delay in F.I.R. reaching the Court, it is true that the F.I.R. has reached the Court with some delay; but, only on the ground of delay, the case of the prosecution cannot be rejected. It remains to be stated at this juncture that the evidence of P.W.1 would go to show that that he gave the complaint at about 1.45 A.M. to P.W.13, the Sub Inspector of Police, and the case has been registered immediately. It is pertinent to point out that within a short time i.e., 15 minutes to half an hour, the complaint was given. Under the circumstances, there was no embellishment at all, and not even a cross-examination on that point has been made. Apart from that, the contention put forth by the learned Senior Counsel for A-3 and A-4 that they had no motive or common object or intention at all, and they were all only passive spectators has got to be necessarily rejected for the simple reason that not even one question has been put during the cross-examination of P.Ws.1 and 2 who, according to the prosecution, are eyewitnesses. Hence, it can be stated that without any foundation, such arguments are being advanced before the

appellate forum. Therefore, in view of the evidence available, this Court is of the considered opinion that the lower Court has acted on the acceptable evidence.

19. Coming to the legal position, it could be seen that what was available for the accused was that they had all shared the common intention and acted so. It is true that during night hours, the occurrence had taken place. It remains to be stated that without the common intention, the occurrence could not have taken place. There is ample evidence to show that these accused have participated in the crime, and they were all armed with knife and sticks respectively, and instantaneous death has been brought forth. This Court is of the considered opinion that they had the common intention of killing Sudhakar, and they have acted so, and the fatal injury has been brought forth. It is true that no evidence is available as to who caused the injury. However, the common intention shared by all the accused at the time of the occurrence, is crystal clear from the evidence adduced by the prosecution.

20. For the reasons stated above, this Court is of the view that the offence has got to be converted into one of common intention, and they are liable to be convicted under Sec.302 read with 34 of I.P.C. Accordingly, the conviction of A-1, A-2, A-4 and A-5 under Sec.302 of I.P.C. and of A-3 under Sec.302 read with 149 of I.P.C. is modified, and instead, they are convicted under Sec.302 read with 34 of I.P.C. The sentence awarded by the trial Court in that regard, is sustained. In other respects, the judgment of conviction and sentence passed by the lower Court is sustained.

21. In the result, with the above modification, these criminal appeals are dismissed. It is reported that the appellants are on bail. Hence, the learned Sessions Judge will take steps to commit the accused to prison to undergo the remaining period of sentence.

21-6-2005

nsv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

- 1.The Principal and Sessions Judge, Chengalpattu.
 - 2.The Judicial Magistrate, Tambaram.
 - 3.The Judicial Magistrate, Tambaram,
- Through The Chief Judicial Magistrate, Chengalpattu.

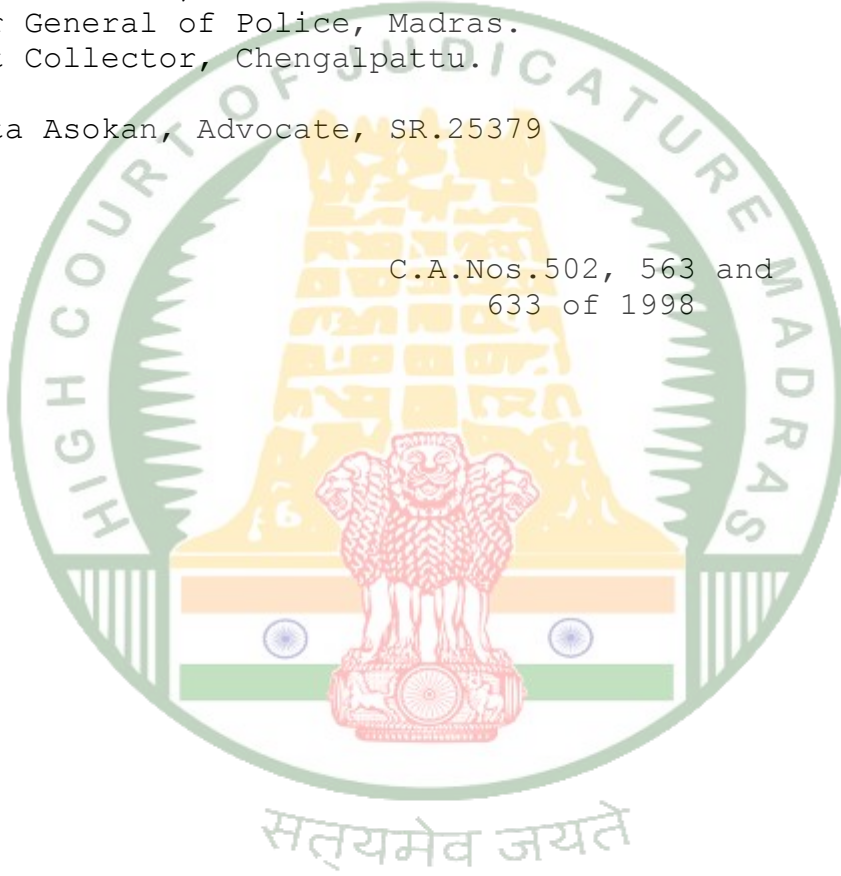
- 4.The Superintendent, Central Prison, Vellore.
- 5.The Superintendent, Central Prison, Cuddalore.
- 6.The Superintendent, Central Prison, Madras.
- 7.The Metropolitan Magistrate No.II, Madras.
- 8.The Metropolitan Magistrate No.II, Madras,
Through The Chief Metropolitan Magistrate,Egmore, Chennai.8.
- 9.The Inspector of Police, Sankar Nagar Police Station,
Chengalpattu.
- 10.The Inspector of Police, Sankar Nagar Police Station
Chennai.
- 11.The Public Prosecutor, Madras.
- 12.The Director General of Police, Madras.
- 13.The District Collector, Chengalpattu.

1 cc to M/s.Gita Asokan, Advocate, SR.25379

mab (co)

dv

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633 of 1998



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